IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1649 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SWASTIK IRON & STEEL REROLLINGMILLS

Versus

RAM AVTAR HIRALAL

Appearance:

1. Special Civil Application No. 1649 of 2002

MR RS SANJANWALA for Petitioner No. 1

MR IM PANDYA for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2-20

MS SHRADHDHA TRIVEDI, AGP for Respondent No. 21-22

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 14/08/2002

ORAL JUDGEMENT

1. The petitioner has approached this Court

for seeking relief to the effect that the respondents nos. 21 and 22 of this petition be directed not to effect the recovery as per the order of the District Collector, Mehsana which is annexed at Annexure-F to this petition. The petitioner has also prayed for certain incidental reliefs.

2. It appears from the record of this petition that respondent nos. 2 to 20 had filed Recovery Applications Nos. 10 of 1987 to 29 of 1987 before the Labour Court, Kalol claiming the amounts mentioned therein on the ground of unpaid arrears which the respondents were entitled to receive. All these proceedings came to be consolidated by virtue of order passed in Misc. Application No. 11 of 1987. During the pendency of the proceedings, a settlement was arrived at between the parties and in light of that settlement, the Labour Court passed order to drop the said proceedings as having been withdrawn. It also appears that a petition before this Court being Special Civil Application No. 7066/2001 was filed challenging the said proceedings. In view of that settlement, permission to withdraw Special Civil Application No. 7066/2001 was requested for and the same was granted by this Court vide order dated 21/1/2002 and that petition stood disposed of as withdrawn. The petitioner states that through oversight the settlement which was arrived at between the parties before the Labour Court was not placed before this Court. The petitioner has further made a grievance that despite the fact that the settlement is arrived at and due intimation about it has been given to respondent nos. 21 and 22, they are taking steps to recover the amounts by way of recovery of arrears. As stated above, to prevent them to do so the present petition has been filed.

2.1. This Court [Coram : R.M. Doshit, J.] after perusing the settlement, raised certain doubts and thought it fit to direct the petitioner to furnish the residential address of the concerned workman i.e. respondents nos. 2 to 20 within 15 days from the date of the said order and upon such addresses being furnished, fresh notice to be issued to those respondents. The notice was made returnable on 9th July, 2002. It is stated by the petitioner that depsite the best of the efforts the present residential addresses of those respondents could not be collected as they have left their local residential places and gone back to their native places. In view thereof, the petitioner filed appropriate application requesting the Court to grant permission to effect service of the notice by substituted service. Considering the circumstances on record, the

said permission was granted and the petitioner was directed to publish a notice of this petition in the newspaper having wide circulation in North Gujarat. The petitioner was also directed to produce authentic copy of the settlement. Accordingly, the said directions were carried out and notice was duly published in 'Jay Hind' and producing copy of the settlement certified to be authentic, it was found that though the notice was published in Gujarati daily, it was in English. Therefore, another direction was given to publish the notice in Gujarati language. The said direction has also been complied with. In the aforesaid notice it has been made clear that if respondents nos. 2 to 20 did not remain present on the date of hearing, the petition would be decided in their absence. Despite such clear notice, none of the aforesaid respondents has remained present before this Court on any occasion. Today also they are not present. So far respondent no. 1 is concerned, who is stated to be the union leader, Mr. I.M. Pandya, learned counsel has filed his appearance and he has stated before this Court that he has no objection if the appropriate relief in favour of the petitioner is granted.

2.2 Since the copy of the settlement that was produced before this Court earlier did not bear any date and some portion thereof was not legible and also some words appeared to have been inserted subsequently, the learned counsel for the petitioner Mr. Sanjanwala was requested to produce accurate and authentic copy of the settlement. Acceding to that request, Mr. Sanjanwala has obtained the certified copy of the said settlement from the Labour Court and has produced the same alongwith the affidavit of one Vikrambhai Shankarbhai Patel, partner of the petitioner dated 6th August, 2002 wherein genuineness of the copy of settlement is vouchsafed. Having gone through the contents of the affidavit and the certified copy of the settlement placed alongwith it, I find that it is very similar to the previous one except that this is certified copy and it also bears date of settlement. Neither respondent no. 1 nor the learned A.G.P. appearing on behalf of respondents nos. 21 and 22 have challenged it. As stated above, respondent nos. 2 to 20 have not remained present despite service of notice. I have, therefore, to accept it. From the settlement it appears that the parties have agreed to withdraw proceedings of Recovery Application Nos. 10/1987 to 29/1987. The record also shows that the same have been withdrawn. In these circumstances, the question of effecting recovery therefore does not arise.

3. Considering the aforesaid facts and circumstances, this petition deserves to be allowed. Respondent nos. 21 and 22 are directed not to take any action against the petitioner for recovery of the amount stated in the Recovery Applications Nos. 10/1987 to 29/1987 as, by virtue of the aforesaid settlement, they do not exist. Since no action is required to be taken pursuant to the said proceedings, it would naturally mean that no action is also required to be taken for the attachment of the petitioner's properties. The petition is, therefore, allowed. Rule made absolute with no order as to costs. D.S. to respondents nos. 21 and 22 permitted.

[Akshay H. Mehta, J.]

* Pansala.